

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

DARIN CLEMENTS,)	
)	
Plaintiff,)	
)	
v.)	Cause No:
)	
GOSMITH, INC., TRUSTED FRIEND,)	
INC., and BRENTON MARRELLI.,)	
)	
Defendant.)	
_____)	

NOTICE OF REMOVAL

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION, AND PLAINTIFF
DARIN CLEMENTS:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, defendants GoSmith, Inc., and Brenton Marrelli (collectively “Defendants”), by and through their undersigned counsel, appearing specially so as to preserve any and all defenses including those available under Rule 12 of the Federal Rules of Civil Procedure, hereby remove the above-captioned action from the Circuit Court of Callaway County, to the United States District Court for the Western District of Missouri, Central Division. Defendants are entitled to removal pursuant to 28 U.S.C. §§ 1331 based on federal question jurisdiction. In support of its Notice of Removal, Defendants state:

I. INTRODUCTION

1. On or about October 10, 2017, plaintiff Darin Clements (“Plaintiff”) commenced this action in the Circuit Court of Calloway County, Missouri, entitled *Darin Clements v.*

GoSmith, Inc., et al., Case No. 17CW-CV00935. (*See generally* Complaint).¹ The Circuit Court of Callaway County is a state court within this judicial district and division.

2. Plaintiff's Complaint purports to assert one claim for Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), (*See generally* Complaint, **Ex. A** at ¶¶ 1-8).

3. This case is properly removable pursuant to 28 U.S.C. § 1441 because federal question jurisdiction is present. In pertinent part, section 1441 provides as follows:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a).

4. As shown below, this matter is properly removable under 28 U.S.C. § 1441 as the United States District Court has original jurisdiction over this case under 28 U.S.C. § 1331.

II. FEDERAL QUESTION JURISDICTION EXISTS OVER THIS ACTION

5. Federal district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treatises of the United States." 28 U.S.C. § 1331. Removal jurisdiction based upon a federal question exists when a federal question is presented on the face of a plaintiff's complaint. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

6. This is a civil action arising under the Constitution, laws, or treatises of the United

¹ A copy of all process, pleadings, and orders served on GoSmith and Marrelli in the State Court Action, including Plaintiff's Complaint, are attached to this Notice pursuant to 28 U.S.C. § 1446(a) as Exhibit "A."

States because Plaintiff's Complaint names a claim for violation of the TCPA. (*See* Complaint ¶¶ 1-8). Plaintiff's Complaint therefore presents a federal question within the meaning of 28 U.S.C. § 1331, as it arises under the laws of the United States. *See Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740, 753 (2012) (holding federal courts have original jurisdiction to hear TCPA claims pursuant to 28 U.S.C. § 1331).

7. Accordingly, Plaintiff's federal claim arises under the laws of the United States and could have been originally filed in this Court.

III. ADOPTION AND RESERVATION OF DEFENSES

8. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of Defendants' rights to assert any defense or affirmative matter, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under California law and/or Fed. R. Civ. P. 12, any state or federal statute, or otherwise.

IV. PROCEDURAL REQUIREMENTS

9. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases.

10. True and correct copies of "all process, pleadings, and orders" served upon Defendants to date are attached hereto as **Exhibit A** in conformity with 28 U.S.C. § 1446(a). No other process, pleadings, or orders have been served upon Defendants to date in this case.

11. This Notice of Removal is timely under 28 U.S.C. § 1446(b) and Fed. R. Civ. P.

6(a)(3) because the State Court Action was served via certified mail on October 12, 2017, and received by Defendants on October 17, 2017. Therefore, this Notice of Removal is filed within thirty days after Defendants' "receipt by service . . . of the initial pleading or summons," and within one year of the original filing of the Complaint. 28 U.S.C. § 1446(b)(2)(B).

12. Defendants have heretofore sought no similar relief in this action.

13. Venue in this Court is proper pursuant to 28 U.S.C. §1441(a) because the United States District Court, Western District of Missouri, Central Division, is the federal judicial district and division embracing the Circuit Court in and for Callaway County, Missouri, where the State Court Action was originally filed.

14. Defendants gave Plaintiff written notice of the filing of this Notice of Removal pursuant to 28 U.S.C. § 1446(d). The Notice to the Plaintiff is being filed concurrently and a copy is attached hereto as **Exhibit B**.

15. Pursuant to the requirements of 28 U.S.C. § 1446(d), Defendants have filed a Notice of Removal with the Clerk of the Circuit Court of Callaway County, Missouri, where the Petition was originally filed. The Notice is being filed concurrently and a copy is attached hereto as **Exhibit C**.

16. Defendants have not filed an answer or other responsive pleading to the Petition in the State Court Action. A true and accurate copy of the docket sheet and all pleadings served in Defendants prior to removal to this Court is attached as **Exhibit A**.

17. Pursuant to 28 U.S.C. § 1446(b)(2), co-defendant Friend Trusted Inc., erroneously sued as "Trusted Friend, Inc." consents to the removal of this action. *See* **Exhibit D**.

18. Pursuant to 28 U.S.C. § 1446(d), Defendants are filing this Notice of Removal with this Court, serving a copy of this Notice of Removal upon Plaintiff, and filing a copy of this

Notice of Removal, as well as a Notice of Filing Notice of Removal, in the Circuit Court of Callaway County, State of Missouri.

19. Defendants reserve the right to supplement this Notice of Removal by adding any jurisdictional defenses that may independently support a basis for removal.

WHEREFORE, Defendants pray that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the Circuit Court in and for Callaway County, Missouri, to the United States District Court for the Western District of Missouri, Central Division.

Respectfully submitted,

HAMILTON WEBER LLC

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** Pro hac vice admission to be filed*
Attorneys for Defendants
GoSmith, Inc., and Brenton Marrelli

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served this

13th day of November, 2017 by:

 X by United States mail, postage prepaid;

 by hand delivery;

 means of the Notice of Electronic Filing; to:

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